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No. 08-127

FILED
AUG 29 2008
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In the
Supreme Court of the United States

RONALD JOHNSON,

Petitioner,

vs.

CITY OF SHOREWOOD; CITY OF MINNETONKA; RILEY-PURGATORY BLUFF CREEK WATERSHED DISTRICT; TIVESCO, a partnership; and its Partners; ROBERT H. MASON, INC., a corporation; HIGHLAND PROPERTIES, INC., a corporation; STEINER AND KOPPELMAN, INC., a corporation; and HIGHLAND VILLA BUILDERS, INC., a corporation,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MINNESOTA COURT OF APPEALS

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED:

I. DO *WILLIAMSON COUNTY* AND *SAN REMO* PERMIT THE UNITED STATES SUPREME COURT REVIEW OF A TAKINGS CLAIM IN 2008 WHICH WAS FULLY LITIGATED FROM 1991-1996, AFTER PETITIONER INITIATED NEW LAWSUITS IN FEDERAL AND STATE COURTS CLAIMING THE SCOPE AND AWARD OF THE TAKING WAS INSUFFICIENT?

II. SHOULD FEDERAL COURTS GIVE FULL FAITH AND CREDIT AS PER *SAN REMO* WHEN A PETITIONER FREELY AND WITHOUT RESERVATION SUBMITTED HIS FEDERAL CLAIM TO THE STATE COURT AND RECEIVED A DECISION FROM THE STATE COURT ON HIS FEDERAL CLAIM?

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STATEMENT OF THE CASE

Petitioner and his wife purchased a 20-acre parcel of undeveloped property in the City of Shorewood, Minnesota in 1981. At the time Petitioner and his wife purchased the parcel, it was bisected by a drainage ditch that runs from the northeast corner to the southwest corner, emptying into Purgatory Creek.

In 1984, private developer Trivesco began developing the land to the south and the west of Petitioner's property. In connection with the planned private development, the City of Shorewood constructed a road berm, culvert, and pond-control structure to the south of Petitioner's property. The 100-year flood plain was designated at an elevation of 917.1 above sea level, prohibiting construction at elevations lower than 919.1 feet.

In 1991, Petitioner initiated a lawsuit against the City of Shorewood, claiming that his land had been taken without just compensation due to overflow of storm-sewer water on his property. While Petitioner alleged a regulatory taking due to the flood-plain restrictions, the state court determined that the pond and associated control structure had physically taken Johnson's property up to 914 feet above sea level, the height the water would rise to during "major storm events." On or about August 17, 1993, the district court issued a writ of mandamus compelling Shorewood to commence condemnation proceedings to obtain a drainage easement on Petitioner's property up to 914 feet above sea level. (App. 152-166). The district court also awarded attorneys fees and costs to the Petitioner. The City of

Shorewood appealed the award of attorneys' fees and costs which was affirmed by the Court of Appeals in May 11, 1994.

The City of Shorewood then instituted condemnation proceedings. Appointed Commissioners awarded Petitioners $2,000 for the taking and $3,000 for "cost to cure" damages. Not satisfied, Petitioner challenged the commissioners' award and the scope of the taking. In an order dated October 25, 1995, the district court determined that Petitioner's challenge to the scope of the taking was untimely and he was collaterally estopped from re-litigating the scope of the taking. The district court did permit a jury to determine the value of the taking.

On October 24, 1996, a jury awarded Petitioner $2,000 for the taking and $63,000 in clean-up costs. (App. 132-234). However, the court vacated the $2,000 for the taking in light of the jury's finding that the taking had not diminished the market value of Petitioner's land. The City of Shorewood moved for judgment notwithstanding the verdict and alternatively for a new trial contesting the award of clean-up costs, which were both denied. The City of Shorewood then appealed the decision to the Court of Appeals which affirmed the lower court decision. (App. 125). Petitioner did not challenge the amount of the award or the jury's conclusion that the fair market value would be restored to the pre-taking value by the clean-up award.

The City of Shorewood paid Petitioner $116, 480.16 in satisfaction of the $63,000 award plus interest accrued in January 1985 to present on May 18, 1998.

Petitioner commenced a separate lawsuit against the City of Minnetonka in 1996, alleging the privately developed Ashcroft development had been diverting storm water onto Johnson's property since early 1992. Petitioner's action was dismissed without prejudice for failure to join indispensible parties. Petitioner did not appeal that decision.

On June 22, 2000, Petitioner filed a Second Amended, Supplemented and Verified Complaint in federal district court, alleging, *inter alia*, federal and state regulatory and physical takings. Petitioner's Complaint exhaustedly discussed the flooding of his property in the 1990's by Respondents City of Shorewood, City of Minnetonka, Riley-Purgatory-Bluff Creek and/or Trivesco and the result of nine-year inverse condemnation proceedings that he now claimed was insufficient in scope and award. On July 11, 2001, the United States District Court adopted the recommendations of the Magistrate, ordering that the claims arising from the prior state court litigation be barred by collateral estoppel and dismissed with prejudice. Additionally, as to the alleged 2000 bike trail taking on Vine Hill Road, the court adopted the recommendation that the takings claim was unripe for review and declined to exercise supplemental jurisdiction on the remaining claims against Shorewood and Minnetonka.

On March 5, 2004, the United States Court of Appeals for the Eighth Circuit affirmed the recommendations of the Magistrate Judge and the Decision of the District Court. (App. 105-123). The Eighth Circuit found the lower federal courts lacked jurisdiction regarding the 1992-1993 takings issues because Plaintiff was challenging prior state court

decisions, asking the federal court for the same remedies as were previously asked for in state court, compensation for a taking. The United States Supreme Court denied further review.

Within a month of the denial for further review at the federal level, Petitioner filed the same Complaint in Minnesota state court, only removing the names of the federal defendants. The state trial court granted all defendants' motions for summary judgment in an order dated on October 11, 2006. (App. 47). The court determined that Petitioners flooding taking claims were barred by collateral estoppel, res judicata and the statute of limitation as Petitioners had a full and fair opportunity to litigate their 1991 takings claims. (App.73). Further, the court found that Petitioners failed to support the 2000 bike trial takings claim. (App. 64-65). The Court of Appeals affirmed the decision of the trial court and the Minnesota Supreme Court denied the Petition for Review.

ARGUMENTS SUPPORTING DENIAL OF THE WRIT

There is no reason for the United States Supreme Court to accept Petitioner's Petition For A Writ of Certiorari.

The Questions presented by the Petitioner in his Petition For A Writ of Certiorari fail to provide an appropriate basis for U.S. Supreme Court review of the Minnesota state court decisions. First, based upon the procedural posture of the current litigation, *San Remo* and *Williamson County*, do not apply. Further, even if the holdings *San Remo* and *Williamson County* do apply, the Minnesota state court properly considered the federal law claims freely presented by Petitioner. As Petitioner fails to provide a basis for U.S. Supreme Court review of state court decisions, his Petition For A Writ Of Certiorari must be denied.

I. PETITIONER IS IMPROPERLY ATTEMPTING TO USE *WILLIAMSON COUNTY* AND *SAN REMO* TO COLLATERALLY ATTACK A 1996 FULL AND FINAL DECISION FROM THE MINNESOTA STATE COURTS

Petitioner's federal and state takings claims related to the flooding of his property were fully adjudicated in inverse condemnation proceedings from 1991 to 1996. Petitioner did not appeal the scope of the taking nor the amount of the taking award at the conclusion of the inverse condemnation

proceedings. Petitioner's attempt to now circumvent his failure to appeal that decision by claiming *Williamson County* and *San Remo* prevented him from presenting his federal claims in federal court in this most recent lawsuit is meritless.

The principal purposes of the findings in *Williamson* and *San Remo* is to provide parties one forum for the litigation of their claims and to prevent parties from re-litigating cases in federal court after obtaining relief in state court. *See San Remo Hotel, L.P v. City and County of San Francisco, CA,* 545 U.S. 323, 125 S.Ct. 2491 (2005); *Williamson County v. Hamilton Bank,* 473 U.S. 172, 105 S.Ct. 3108 (1985).

Pursuant to *Williamson County,* a landowner cannot seek remedy from the federal courts until the State "fails to provide an adequate post deprivation remedy for the property loss." *Williamson County,* 473 U.S. at 195, 105 S.Ct. at 3121. The procedural posture of *Williamson County* was crucial to the case. In *Williamson County,* the respondent had not yet received a final decision regarding the application of the zoning ordinance and subdivision regulations or utilized the state procedures for just compensation. 473 U.S. at 186, 105 S.Ct. at 3116. Due to these failures, the court found the developer's claims were not ripe for adjudication in the federal courts.

Twenty years later, the U.S. Supreme Court in *San Remo* reinforced the federal courts' long-standing rule to apply the full faith and credit statute to issues that were previously adjudicated in state courts. 545 U.S. 323, 125 S.Ct. 2491 (2005). In reaching its decision, the U.S. Supreme Court provided substantial discussion regarding a party's power to "reserve" federal claims for federal courts and

rejected the contention that *Williamson County* prohibits plaintiff from advancing their federal claims in state courts. *San Remo*, 545 U.S. at 342-346, 125 S.Ct. at 2504-06.

The *San Remo* court cited to the *England* case specifically finding that the purpose of the *England* reservation for federal claims (as discussed *infra* Argument II) was not to grant plaintiffs a second bite of the apple in their forum of choice. *Id.*, 545 U.S. at 341, 125 S.Ct. at 2503. The *San Remo* court held that whatever the merits of the preclusive effect of state court proceedings, the U.S. Supreme Court determined it was not free to disregard the full faith and credit statute solely to preserve petitioner's availability of a federal forum and seemingly provide multiple chances to litigation of the same claims.

Petitioner Ronald Johnson is petitioning the U.S. Supreme Court, relying on "holes" in *San Remo* and *Williamson County* that allegedly erroneously permitted the Minnesota State Courts to ignore his federal Just Compensation Clause claims and rights. However, as the principles of *Williamson County* and *San Remo* do not apply, this is not a basis for U.S. Supreme Court review. Petitioner's Petition for Writ of Certiorari fails to present the procedural status of the current litigation appropriately. Petitioner already litigated his flooding taking claim and had the opportunity to appeal that decision (1991-1996), brought an independent action against the City of Minnetonka alleging flooding (1996), brought a federal lawsuit over the flooding taking (2000-2004), and brought a claim in the Court of Federal Claims (2001), before bringing this most recent action in state court (2004-present).

Williamson and *San Remo* may have provided plaintiff a potential avenue for review or questioning if in fact the most recent decision of the Minnesota Supreme Court was an entry of a final state judgment denying just compensation. However, the most recent decision of the Minnesota State Courts (in the most recent litigation brought by Petitioner) barred Petitioner from relitigating the flooding taking claim, that has been litigated ad nauseum for the past 17 years. (*See generally* App. 1-166).

Petitioner's state and federal flooding takings claims were fully and willingly adjudicated in state court to a full and final decision from 1991-1996 and federal court from 2000-2004, culminating in a denial of certiorari from the U.S. Supreme Court and Petitioner is now precluded by the full faith and credit doctrine. As Petitioner has failed to provide a basis for the extraordinary remedy of U.S. Supreme Court, his Petition For A Writ Of Certiorari must be denied.

II. FEDERAL COURTS ARE BOUND TO GIVE FULL FAITH AND CREDIT TO A STATE COURT'S DECISION WHEN A PETITIONER FREELY AND WITHOUT RESERVATION SUBMITS HIS FEDERAL CLAIM TO A STATE COURT

In bringing his most recent action in State Court, Petitioner filed a twenty-four count Complaint, alleging violations of state and federal law, including 42 U.S.C. §§ 1983, 1985 for the

permanent and temporary taking of his property. By freely and without reservation submitting his federal claims to the Minnesota State Courts, Petitioner voluntarily presented all federal claims to the state court for a decision and waives his right to litigate the federal claims in federal court. The election of the Minnesota State Courts to issue decisions on these federal claims was fully within its rights.

A party that elects to unreservedly litigate his federal claims in state court cannot ignore the adverse state decision and start all over again in federal district court. *See England v. Louisiana St. Bd of Med. Examiners,* 375 U.S. 411, 84 S.Ct. 461 (1964). A party may reserve federal claims, by following the requirements as first seen in *Govt. & Civic Employees Organizing Comm., C.I.O v. Windsor,* 353 U.S. 364, 77 S.Ct. 838 (1957). *See England,* 375 U.S. at 420, 84 S.Ct. at 467. To reserve a federal claim, a litigant "must inform those courts what his federal claims are, so that the state statute may be construed in light of those claims." *England,* 375 U.S. at 420, 84 S.Ct. at 467 (internal quotation omitted). Upon exposing his federal claims, a petitioner explains to the state court that he is doing so only to comply with *Windsor,* and qualify that he intends, if ruled against on the state law claims, to return to Federal District Court to dispose of his federal claims. *Id.* If a petitioner fails to make such a reservation and voluntarily fully litigates his federal claims in state court, he cannot return to federal court and relitigate the claims.

First, all of Petitioner's numerous claims were fully adjudicated in previous litigations. The flooding inverse condemnation claims were litigated in 1991-

1996. Then, when Johnson brought his action in federal court in 2000, the federal courts considered the previous state court decisions and federal court claims and the affect any decision it would have on the earlier state court judgments. As a result, the Eighth Circuit affirmed the summary judgment on Johnson claims under 42 U.S. § 1983 finding they were either fully litigated in the earlier state court or not ripe because they were not presented to the state court. (App. 117). Further, the Eighth Circuit noted that federal courts give full faith and credit to state court judgments, citing 28 U.S.C. § 1738; *Mitra v. Warren City Sch. Dist. Bd. of Educ*, 465 U.S. 75, 81 (1984). Finally, the Eighth Circuit agreed that many of Johnson's claims called on them to answer issues identical to those the Johnson already obtained a state court decision on against Shorewood. They found that the federal district court lacked jurisdiction under *Rooker-Feldman* because they were challenging the state judgment as inadequate and asking the federal court for the same remedy they requested in state court: just compensation. (App. 120).

However, as to any new federal claims that were freely, voluntarily and without reservation submitted to the Minnesota State Courts in the 2004 litigation, Petitioners are bound by that decision and cannot relitigate in federal courts. *See England,* 375 U.S. 411, 84 S.Ct. 461. The federal courts must give full faith and credit to the state court decisions on federal claims. *San Remo,* 545 U.S. at 347, 125 S.Ct. at 2507.

CONCLUSION

Petitioner failed to provide any basis for U.S. Supreme Court review and Respondent City of Minnetonka respectfully requests the Court deny his petition.

Respectfully Submitted this 29th day of August, 2008.

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